IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

MFA.No. 419 of 2001(A)

OPMV.1752/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
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APPELLANTS/PETITIONERS:

1.AYISHA BEEVI,W/O.LATE MOHAMMED K., KOOTUMADATH HOUSE, PUNNAYURKULAM P.O., THRISSUR.

2.SAFIA, D/P.LATE MOHAMMED K., KOOTUMADATH HOUSE, P.O.PUNNAYURKULAM, THRISSUR.

3.SULAIKHA,D/O.LATE MOHAMED K., KOOTUMADATH HOUSE, P.O.PUNNAYURKULAM, THRISSUR.

4.SHAREEF,ALIAS SHAMEER, S/O.LATE MOHAMED K.,KOOTUMADATH HOUSE, P.O.PUNNAYURKULAM, THRISSUR.

5.SHAMEERA,D/O.LATE MOHAMED K., KOOTUMADATH HOUSE, P.O.PUNNAYURKULAM, THRISSUR.

6.ZABAIR, (MINOR),S/O.LATE MOHAMMED K., KOOTUMADATH HOUSE, P.O.PUNNAYURKULAM, THRISSUR.

(MINOR 6TH APPELLANT REP. BY HIS MOTHER AND GUARDIAN 1ST APPELLANT AYISHA BEEVI,W/O.LATE MOHAMED K., KOOTUMADATH HOUSE, P.O.PUNNAYURKULAM, THRISSUR).

BY ADV. SRI.DILIP J. AKKARA

RESPONDENTS/RESPONDENTS:

1.K.A.NASARUDEEN,KARUPPAMVEETTIL HOUSE, ORIMANAYOOR, P.O.ORUMANAYOOR, THRISSUR.

2.ANANDHAN,S/O.SEKHARAN,POOKKAYIL HOUSE, THYKAD VILLAGE, NENMINI DESOM, THRISSUR.

3.THE NEW INDIA ASSURANCE COMPANY LIMITED, ANUGRAHA BUILDING, VADAKKANCHERRY, KUNNAMKULAM, THRISSUR DIST.

BY ADV. SRI.KKM.SHERIF FOR R3
SRI.M.ANIL KUMAR FOR R1
SMT.C.SUCHITHRA
SMT.PREETHI K.PURUSHOTHAMAN
SMT.C.B.ANUROOPA

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 06/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.419 OF 2001 (A)

Dated this the 6th day of June, 2007

J U D G M E N T

KOSHY,J.

Sole bread winner of a family died in a motor accident on 23.7.1998. He was 26 years old. He was unmarried. But he was maintaining a big family consisting of his widowed mother, three younger sisters and two younger brothers. He was working as a butcher in his own butcher shop. Ext.A6 is the licence to show that he had licence to conduct a butcher shop. Ext.A7 is the professional tax receipt to show that he was doing the profession of butchers. According to the claimants the deceased was getting Rs.5,000/- per month. To support this he produced Ext.A5 series of insurance premium receipts as well as Ext.A8 series of chitti pass books and he was saving about Rs.4,000/- monthly. But tribunal did not consider these factors because some defaults were made in Ext.A5 series of receipts paying insurance premium. It is further noticed that after his

death also chitti instalments were paid. But we are of the opinion that such a reason cannot be accepted because if the chitti instalments fails the entire chitti will lapse and hence his relatives might have paid the amount. But the fact that while he was alive he was paying chitti amounts as can be seen from his passbooks. It is also pointed out that even in 1998 even an unskilled worker in Kerala will get more than Rs.150/- per day and a licenced butcher was earning at least Rs.5,000/- per month. In the absence of data, we fix his monthly income of Rs.2,400/-. It is true that he was maintaining a large family. His father was already no more. His widowed mother, three younger sisters and two brothers were depending on him for their livelihood. It is true that for calculating compensation multiplier fixed under second schedule should be looked into for guidance. But Supreme Court held that in exceptional circumstances it can be varied. It is true that his mother was 54 years old. Tribunal therefore taking the age of the mother, 8 was taken as the multiplier. It is contended that the minor brother was only aged 14 and minor sister was only aged 16 at the time of death and he has to maintain them also and the deceased was aged 26. Here in view of the exceptional

circumstances as he was maintaining a large family we take 10 as the multiplier. After deducting $^{1}/_{3}^{rd}$ Rs.1,600/- is taken as loss of dependency and taking 10 as the multiplier, compensation payable for loss of dependency was Rs.1,92,000/-. Tribunal has already awarded Rs.72,000/- for loss of dependency. Therefore claimants are entitled to an additional amount of Rs.1,20,000/-. Even though it was argued that compensation granted under other heads was very meager, we are not enhancing the compensation under other heads. Additional amount of Rs.1,20,000/- should be deposited by the 3rd respondent Insurance company with 7% interest from the date of application till date of deposit. It is submitted that all the sisters are of marriageable age. Therefore on deposit of the amount, appellants are allowed to withdraw the amount at the proportion fixed by the Tribunal. Appeal is allowed partly.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.419 OF 2001 (A)

J U D G M E N T

6th June, 2007